

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER 98-0081 ST**  
**Sales And Use Tax**  
**For Tax Periods: 1994 Through 1996**

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**ISSUES**

**1. Sales and Use Tax-Equipment Lease**

**Authority:** 45 IAC 2.2-4-27 (d)(3)(A), Mason Metals v. Dept. of State Revenue, 590 N.E. 2d 672 (Ind. Tax 1992).

Taxpayer protests the imposition of sales tax on equipment rentals to a related corporation.

**STATEMENT OF FACTS**

Taxpayer is a limited liability corporation that owns heavy equipment such as a crane and a bulldozer. It leases the equipment with an operator to another corporation. The two corporations are associated corporations since the same two individuals are the sole stockholders of both corporations. The lease payment is a flat monthly amount. Taxpayer paid sales tax on its purchase of the heavy equipment.

**1. Sales and Use Tax-Equipment Lease**

**DISCUSSION**

IC 6-2.5-4-10 defines the leasing of tangible personal property as a retail transaction that is subject to the sales tax pursuant to IC 6-2.5-2-1. Retail merchants are required to collect and remit sales tax on all leases of tangible personal property. Sales tax is not imposed, however, on services. 45 IAC 2.2-4-27(d)(3)(B) concerns the lease of tangible personal property with an operator. That regulation states in pertinent part:

The rental of tangible personal property together with an operator as part of a contract to perform a specific job in a manner to be determined by the owner of the property or the operator shall be considered the performance of a service rather than a rental or lease provided the lessee cannot exercise control over such property and operator.

In Taxpayer's case, Taxpayer is the lessor of the tangible personal property. The Taxpayer owns the equipment and employs the drivers of the equipment. The two shareholders of Taxpayer are the only operators of the equipment. Taxpayer determines how to perform the job and prepare the site for construction to the specifications of the lessee corporation. Taxpayer exercises control over the equipment. And directs the movement of the equipment. None of the employees of lessee corporation ever operate the equipment. Taxpayer also pays sales tax at the time of the purchase of the equipment. Lessee does not have exclusive use of the property. Further the lessee does not have the right to control the machinery or direct the manner of the use of the property. Therefore, Lessor is leasing the service of an operator and equipment to perform a specific function for lessee.

Lessor and Lessee are associated corporations. Each corporation keeps its minute books and Secretary of State filings up to date. Each corporation files separate tax returns. Each corporation has its own accounting system on two separate computers. There is a written lease between the corporations concerning this transaction. Taxpayer's payment of sales tax at the time of purchase of the equipment is consistent with Taxpayer's contention that it is using the equipment in the rental of an exempt service to the associated corporation. Taxpayer has provided adequate proof that the two corporations are separate from each other and that this is an arm's length transaction.

### **FINDING**

Taxpayer's protest is sustained.